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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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10/726,008

12/01/2003

Anthony Vesci

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61285 7590 02/07/2007  
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EXAMINER

CROWELL, ANNA M

ART UNIT

PAPER NUMBER

1763

MAIL DATE

DELIVERY MODE

02/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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|   |                                      |                                     |  |
|---|--------------------------------------|-------------------------------------|--|
| <b>Advisory Action</b><br><b>Before the Filing of an Appeal Brief</b> | <b>Application No.</b><br>10/726,008 | <b>Applicant(s)</b><br>VESCI ET AL. |  |
|   | <b>Examiner</b><br>Michelle Crowell  | <b>Art Unit</b><br>1763             |  |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

AME

  
**PARVIZ HASSANZADEH**  
**SUPERVISORY PATENT EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: of the following reasons. 1. Applicant has argued that Wu et al. simply does not provide any motivation to derive a diametrically expandable snap fit structure to hold magnets as claimed; however, the examiner recognizes that obviousness can only be established by modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art would be motivated to modify the collar of Wu et al. to be capable of diametrically expanding to snap fit a wall or liner of a chamber since it is an obvious design choice that would eliminate void space between the collar and the wall and hence prevent corrosion or contamination. In addition, making elements adjustable (i.e. diametrically expandable snap fit) was held to have been obvious (*In re Stevens*, 212 F.2d 197, 101 USPQ 284 (CCPA 1954)).

2. Applicant has argued that the obviousness rejections cannot be based on impermissible hindsight; however, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant case, as stated above, one of ordinary skill in the art would be motivated to modify the collar of Wu et al. to be capable of diametrically expanding to snap fit a wall or liner of a chamber since it is an obvious design choice that would eliminate void space between the collar and the wall and hence prevent corrosion or contamination.

3. Applicant has argued that the Office Action is ignoring the language of the claim taken as a whole as Wu et al. also fails to teach or suggest other claimed elements, for example, the hollow collar having an open end face, a cap to seal the open end face and magnets being insertable through the open end face, as claimed in claim 1; however, the Examiner has taken the language of the claim as a whole. For example, according to Merriam Webster, the term "end" means the part of an area that lies at the boundary. In the instant case, the open end face is 130 since it's the inside boundary of the housing 140 (par. [0049], Fig. 3), the cap is 120 since it seals the open end face (par.[0051]), and the magnets 150 are insertable through the open end face 130 (par.[0049], Fig.3). Thus, the rejection of Wu et al. satisfies the claimed limitations. Additionally, applicant has argued that Wu et al. teaches away from the present invention since the present invention teaches inserting the magnets through an open end face that is then sealed with a cap; however, it is noted that the features upon which applicant relies (i.e., the order of inserting the magnets through an open end face that is then sealed with a cap) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).